

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**JOYCE COLE,
Plaintiff,**

v.

**Civil Action No. 1:13cv8
(Judge Keeley)**

**HARRISON COUNTY SHERIFF'S DEPT.,
Defendant.**

**OPINION/ REPORT AND RECOMMENDATION
TO DISMISS CASE WITHOUT PREJUDICE**

The *pro se* plaintiff initiated this case on January 17, 2013, by filing a Complaint against the Harrison County Sheriff's Department [DE 1]. Because the plaintiff had not paid the required filing fee or filed a request to proceed as a pauper, the Clerk issued a Deficiency Notice advising the petitioner to do so within 21 days of the date of the Order [DE 3]. The Clerk issued an Amended Notice on January 18, 2013 [DE 4]. Each Notice advised Plaintiff that if she failed to file the required information within twenty-one (21) days, the Court would dismiss her case.

Having received no further documents from the plaintiff, on July 23, 2013, the Court entered an Order directing the plaintiff to show cause within fourteen days, why her case should not be dismissed for failure to prosecute. The Order expressly stated: "The failure to timely do so will result in the dismissal of this case without further notice."

28 U.S.C. §1914(a) reads as follows:

The Clerk of each district court shall require the parties instituting any civil action, suit or proceeding in such court, whether by original process, removal or otherwise, to pay a filing fee of \$350

L.R. Gen. P. 3.01 provides the following:

The Court may authorize the commencement, prosecution or defense of any civil or

criminal action or proceeding, or any appeal . . . , without prepayment of fees and costs or security, by a person who makes an affidavit that he or she is unable to pay costs or give security as provided in 28 U.S.C. §1915.

Plaintiff has done neither.

Again, Plaintiff had 21 days to comply with the Notice of Deficient Pleading, in particular to either pay the filing fee or to file a Motion to Proceed In Forma Pauperis. She did neither. The Court issued an Order to Show Cause. To date, Plaintiff has not paid the filing fee or filed a Motion to Proceed in Forma Pauperis. She has also not responded to the Order to Show Cause.

The undersigned therefore recommends Plaintiff's Complaint be dismissed without prejudice.

RECOMMENDATION

For the above reasons, the undersigned respectfully **RECOMMENDS** that Plaintiff's Complaint (Docket Entry 1) be **DISMISSED** without prejudice for failure to prosecute.

Any party may, within fourteen (14) days after being served with a copy of this Report and Recommendation, file with the Clerk of the Court written objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection. A copy of such objections should also be submitted to the Honorable Irene M. Keeley, United States District Judge. Failure to timely file objections to the Report and Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Report and Recommendation. 28 U.S.C. § 636(b)(1); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S.

1208 (1984); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); Thomas v. Arn, 474 U.S. 140 (1985).

The Clerk of the Court is directed to send a copy of this Report and Recommendation to Plaintiff at her last shown address by Certified United States Mail, Return Receipt Requested.

DATED: 10 October 2013

John S. Kaull
JOHN S. KAULL
UNITED STATES MAGISTRATE JUDGE